

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NEEDLES RESOURCE AREA**

Decision Record and Finding of No Significant Impacts
for the
Clark Mountain Herd Area Burro Removal, Fiscal Years 2007 - 2012
CA-690-EA04-27

In accordance with 16 United State Code (U.S.C.) 1331-1340, 18 U.S.C. 47, and 43 U.S.C. 315, 1711, and 1712, it is my decision as the California Desert District Manager to approve the Proposed Action as reviewed in the *Clark Mountain Herd Area Burro Removal, Fiscal Years 2007 - 2012* Environmental Assessment (CA-069-EA04-27) and described below. I find that this action will not result in significant impacts on the human environment pursuant to Title 40 Code of Federal Regulations 1508.27 (a) and (b) (1) through (10) and that an Environmental Impact Statement is not required. I further find this action in conformance with applicable land use plans. A copy of this Decision Record and attendant Conditions of Approval shall be in the possession of the on-site operator during all undertakings approved herein.

The Bureau of Land Management (BLM) manages public land through its authorities in the Federal Land Policy Management Act (FLPMA) including land use planning, acquisition, and disposition (FLPMA Subchapter II), and regulation of use, occupancy and development (Subchapter III) of the public lands. See 43 USC 1711 to 1722 and 1731 to 1748. I find that the action will not cause unnecessary or undue degradation in accordance with 43 United States Code 1732(b). FLPMA specifically provides that in managing the use, occupancy, and development of the public lands, the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands. For reasons described in the environmental assessment, the burro gather will result in only minor effects on public lands, but will improve habitat for the desert tortoise.

Specifically, the Bureau of Land Management, Needles Field Office proposes to capture all wild burros populating the Clark Mountain Herd Management Area (HMA) and adjacent areas, (including burros on public land south and east of Mountain Pass), estimated to total 150 burros. Removal activities described in the Bureau of Land Management, Needles Field Office Capture Plan for Wild Burros for the Clark Mountain Herd Area Fiscal Years 2007-2012 may be conducted at any time within the next five years to move towards the management level of zero (0) burros. The removed burros will be transported to BLM's Ridgecrest, California Wild Horse and Burro Holding and Adoption Facility where they will be placed into the BLM's National Adoption Program. The project will be conducted in conjunction with the BLM Ridgecrest Field Office.

The approved action will begin in Fiscal Year 2007 and continue until the objectives are met or there is a change in land use decisions, or new and pertinent information requiring re-evaluation of the capture plan and associated environmental assessment is received. At the end of fiscal year 2012, the capture plan and environmental assessment will be re-evaluated for adequacy and for any required updates. The first phase of this operation is planned to begin in January of 2007.

General Methodology:

The approved action will utilize two methods of capture. Both helicopter assisted gathers and bait/water trapping will be employed. The capture methods may be used singly or in conjunction with one another. Regardless of the method, several sites will be needed to gather the wild burros from the Herd Area. Sites will be pre-existing, such as range improvement projects that have existing corrals, or temporary corrals may have to be erected. No corral will be set up in a wilderness area. However, corrals may be set up along cherry stems or boundary roads of designated wilderness. Special care will be taken to minimize disturbance to resource values in gather areas. Map 1 in the Environmental Assessment shows temporary trap and existing corral sites that may be used.

In addition to the sites pre-selected for temporary traps, up to five additional sites may be utilized as the gather is taking place. The additional temporary sites may be selected if: 1) burros are located too far (more than 5 miles) from the pre-selected sites; 2) the helicopter cannot maneuver the burros to the pre-selected sites; 3) burros are located in areas not previously known to be inhabited by burros; 4) the terrain is too rugged for burros to safely travel to pre-selected sites; 5) unforeseen hazards to the helicopter and/or ground crew are located at the pre-selected sites; and 6) in the event that the burros' safety will be in jeopardy due to illness, injury, and animal age. The sites will be located on public land and will be assessed to establish that they present no conflict with other permitted uses and present no safety concerns. The five potential sites will not be used until the authorized Biologist and Archaeologist have surveyed and determined that no impacts to natural and cultural resource values will occur in association with the use of the site. Each site will be selected based upon the location of the animals and how the topography of the area can best benefit helicopter assisted gathers and vehicle access to set up traps.

Trucks pulling horse trailers and gooseneck 5th-wheel livestock trailers will be used to transport panels, saddle horses, and the captured animals. As a result, trapping locations will be limited to those areas where suitable access exists. Temporary trap sites will be located on and adjacent to existing roadways and designated routes of travel. Temporary corrals will be assembled with a series of 10-foot long metal panels. The corrals will be approximately 20-25 feet in diameter with a swing-gate. A 10-foot panel will be anchored at each side of the corral gate to create a funnel for easier maneuvering of the animals. The trap and related structures will be installed using hand tools and will be removed upon completion of the gather. At some locations, the capture site will incorporate the access road. Should vehicular traffic require access through the trap or the trap is to be left over night, corral end panels or jute netting will be removed to allow through passage. Temporary corrals will be removed after the completion of the gather in the area. Horse trailers, extra horses, weed-free hay and other equipment will be located adjacent to the corral.

The approved project will include up to eight people for ground support at each capture site, their horse trailers and associated pickup trucks, a helicopter fuel truck, the capture project manager's truck and an agency representative's truck. The corral panels and feed for the animals will be transported to project sites on horse trailers. A portable loading chute with solid sides will be used when captured animals are loaded onto semi truck livestock trailers.

The wranglers will ensure: 1) the animals are humanely treated during the capture operation, sorting, loading and hauling; 2) work is conducted in a safe manner; 3) compliance with the guidelines set forth in the capture plan. They will determine if destruction of any sick or injured animals is necessary during the gather. The captured animals will be monitored on a daily basis at their temporary holding area, receiving water and feed according to their needs. In order to avoid traumatizing the burros, handling of the animals will be kept to a minimum. Burros will be transported to the Ridgecrest corrals where the animals will be treated upon arrival for minor injuries and disease not requiring the immediate care of a veterinarian. If the animal cannot be transported, or if it is uncertain if the animal can be transported to the corral facility without further injury, harm, or undue pain, a contracted veterinarian for the wild horse and burro program will be available upon request. Any severely injured or sick animal will be destroyed in accordance to 43 Code of Federal Regulations 4740.31. This regulation requires that animals are to be destroyed only when a definite act of mercy is needed to alleviate pain and suffering. When it is uncertain as to the severity of an injury or sickness, a veterinarian will make a final determination. Destruction will be accomplished utilizing a humane method. Disposition of euthanized animals will consist of removing the body at least 300 feet from any road and leaving the remains to natural processes.

Captured burros will be counted as they are loaded into the horse trailer. Jennies and foals will be kept as pairs, unless the safety of the foal(s) required them to be transported separately, and when practical, jennies and jacks will be kept separate.

All burros removed will be transported to the Ridgecrest Wild Horse and Burro Holding and Adoption Facility by BLM or contracted personnel. Captured burros are very sensitive to people. Because of this, the number of team members who handle the animals will be limited to essential personnel to alleviate stress on the animals. Handling of the animals will be kept to a minimum in order to avoid traumatizing the animals any more than necessary. The number of animals will be counted as they depart the trailer. After unloading, a determination will be made as to which animals, if any, need special attention for injuries, illnesses or any other problems requiring prompt attention. Any orphans will be separated and provisions made to feed and care for them. The jacks will be separated from the pairs and jennies. At the facility, the burros will be prepared for adoption or sale to the public, their final destination.

Specific Methods for Capture

1. Helicopter-aided captures:

Capture and removal of wild burros will be aided by the use of a helicopter. Typically one helicopter will be utilized at each gather site, unless special circumstances require two aircraft. The helicopter will be used to locate and herd the targeted animals to the capture site and assist wranglers in capturing wild burros. Each area will be flown prior to the start of the round-up to locate the animals, study the terrain and locate any hazards to the burros and helicopter (fences, cliffs, power lines). All aircraft safety, communication procedures and aviation risk assessment provisions outlined in the California Desert District Wild Horse and Burro Aviation Safety Plan will be followed when a BLM in-house gather is conducted. Private contractor helicopter activities are required to follow Federal Aviation Administration (FAA) regulations. The helicopter will normally fly at heights between ground level and 500 feet. It will drop as low as 5 or 6 feet when turning the animals. Refueling will involve one fuel truck, which will be restricted to existing roads. Refueling will occur on flat, previously disturbed

areas. Helicopter refueling locations will be located at the capture sites where the refueling truck will be stationed (away from the corral, trailers and vehicles). The helicopter will refuel three to five times each day. Nearby airports may also be used as refueling stations.

Two methodologies of helicopter-assisted gathers will be utilized; drive trapping and roping. Each method typically utilizes four to six wranglers. Each wrangler will have one to three horses. Only one horse per wrangler will be used at a time and the horse will be replaced by a fresh horse as the horse the wrangler is using tires. The spare horses will be kept saddled and ready to go, tethered to the stock trailer. The number of animals herded will typically vary from one to twenty head per capture episode. All attempts will be made to keep the herd together as they are being moved. Rate of movement and distance the animals travel will be based on the condition of animals, terrain, physical barriers, and weather. Should any animal become fatigued or over-stressed, the pilot will break off pursuit, so that the animal(s) can rest and recover.

a. Drive Trapping (run traps):

The drive trapping method will use two temporary wing extensions positioned at 45 to 90 degree angles from two sides of the corral. Wing extensions will consist of 6 feet high jute netting supported by steel tee-posts spaced approximately 15 to 20 feet apart for up to 200 yards long. All 200 yards of wing fencing may not be utilized, as the terrain may not require this. The jute provides a visible barrier that aids in herding the animals to the trap corral. Run traps are usually placed in arroyos or immediately over the crest of a hill where the corral extensions are disguised or not easily seen. Once a group of animals is herded into the trap corral, the gate is closed and the capture is complete. Occasionally an animal may escape during the gather process or foals and mothers occasionally become separated. These animals will be roped to keep them from escaping or foals from being orphaned.

The burros will be herded from the trap corral to the holding corral. These two corrals will be located side-by-side forming the capture site. Burros in the holding corral will then be loaded into a livestock trailer and transported to either another holding area or to the Ridgecrest Wild Horse and Burro Holding Facility. All corrals and wings will be constructed, maintained and operated to handle the animals in a safe and humane manner and be in accordance with the following:

- Traps and holding facilities will be constructed of portable panels, approximately 60 inches tall, with a bottom rail no more than 18 inches from ground level. All traps and holding facilities will be oval or round in design. The dimensions of the corral will vary with the topography and the dimensions of the road.
- All loading chute sides will be fully covered with plywood (without holes) or like material. The loading chute will be a minimum of 6 feet high.
- All runways to the loading chute will be a minimum of 30 feet long and 5 feet high, and will be covered with plywood, burlap, and plastic snow fence or like material placed one to five feet above ground level.
- Wings will not be constructed of barbed wire or other materials injurious to animals. Wings may be constructed along existing fence lines, if the barbed wire or other wire fencing material is removed from the fence posts and laid on the ground distal to the

posts for the length of the wing, or if portable panels are placed along the inside of the fence to protect the animals from injury from the fence wire.

b. Roping:

The helicopter-roping method will use the helicopter to herd the wild burros to the wranglers on horseback. The wranglers will be positioned out of view from the herded burros, but in a position that they can maneuver their horses when pursuing the burros. The helicopter will take the main herd to a holding area and will break off a smaller set of animals that the wranglers can manage, usually one less than the number of wranglers, so that if there is a miss, there is a back-up roper. These animals will then be herded to the capture area. The wranglers will pursue, rope by lassoing the animal around the neck, and then lead the captured animal into the corral. The burro will be led into the holding corral and the rope will be removed from its neck. After a burro is caught it will be herded from the corral into the wing leading into the stock trailer. The animal is then moved into the trailer. This will be repeated until all the targeted animals are captured. The burros will then be transported as previously described.

2. Bait / Water Trapping:

a. Bait Trapping

The trap site will be located on active trails where suitable vehicle access exists. Trap sites will be located on previously disturbed ground. Weed-free hay will be placed on the trails for the burros to become familiar with that food source. Portable panels will be placed around the area where the burros come to feed on the hay. The trapping area will be approximately 40 feet by 40 feet. A trigger gate will be left open until burros are not afraid of coming into the trap. Once the trigger gate is set, the traps will be checked daily for any trapped animals. Trapped burros will be moved to a designated holding area. In the case that other animals are trapped besides burros, the burros will be sorted. If it is not possible to sort without harming the animals, the trigger gate will be opened allowing the animals to escape. When the traps are not in service, the trap gates will be locked open. Trapping operations will extend from a few weeks to several months.

b. Water Trapping

The BLM and the lessee of the Clark Mountain Allotment will work together to water trap burros in order to remove excess burros from the Clark Mountains HA. Water trapping will involve: 1) excluding burros at waters where no trap is set, and 2) setting a one way gate (trigger) at watering site(s). It will use existing corrals and when needed temporary corrals or devices to trap or limit animal access to water.

The allotment lessee will work under a current cooperative agreement for burro removal and will only trap burros within the respective allotment.

The other existing water sources may be closed off to burros. This may include turning off the water to troughs, closing corrals, temporarily placing portable panels, or steel fence posts and wire around water sites (a temporary fence). This temporary fence will

have one to three strands of wire with flags attached to the wire. The flags flapping in the breeze repel burros from the watering area. The temporary fence will be as small as practical. Water sites that are fenced off are generally difficult to access with livestock trailers or are located where setting up traps will result in new disturbance. The temporary barriers at water sources of prime importance to deer will be at least 60 feet long on a side and not over 60 inches tall at any point with opposite sections 42 inches or less in height for escape. Those barriers around bighorn sheep water sources will include several bighorn sheep panels to allow sheep access to the water, while excluding burros. The disturbance will be temporary in nature and consist of post holes for steel fencing. The related structures will be installed by hand using hand tools and will be removed upon completion of the gather in the area.

Traps:

The corrals used to trap burros will contain adequate water and fencing. There will be no exposed barbed wire in any of the corral facilities. Any objects potentially injurious to the animals will be removed or made safe. Water troughs will be located inside each corral. The corrals that will be used to trap burros will be temporarily modified using portable steel pipe panels (5 feet high) that are self supporting to divide the corral into a trapping area and a holding area. The dimensions of the trap and holding areas will vary with the dimensions of the corral. Both areas will be designed so that animals have access to water. This area will be constructed entirely within existing disturbance. The trapping area consists of placing a finger trigger gate at the entrance way of the corral. This will allow the animals to enter to drink, but not exit. The size of the trap area will be approximately 400 square feet, but will vary with the size of corral. A swing gate will be placed between the holding area and the trap area so that trapped burros can be moved into the holding pen. Burros will be loaded and transported within 48 hours of being captured. If the holding facility becomes too crowded, the trigger gate will be locked open, until extra panels are set up to expand the holding facility or until the animals are removed. If the burros are to be transported by truck and trailer by the lessee to a holding corral, the lessee will notify the BLM prior to such action. The holding corral must meet the same standards of the capture corral. The Permittees will feed good quality grass hay, supplied by the BLM, to the captured burros.

All capture related structures will be installed by hand using hand tools and will be removed upon completion of the gather in the area. A new site may then be set up according to the location of other herds. When the traps are not in service, the trap gates will be locked open.

Protection Measures:

Health and Safety (All)

1. Capture Plan activities will be supported by the Needles Field Office Field Projects Health and Safety Plan incorporated by reference, addressing emergency recognition and prevention; communications; emergency contacts; biological hazards; physical hazards; unforeseen hazards, evacuation routes and resources; and, standard operating procedures, engineering controls, and work practices. Releases of any material not authorized will be reported immediately to the Federal

Interagency Communications Center (FICC) at (909) 383-5652. An Initial Report will be faxed to the authorized officer within 24 hours of the incident's discovery (760) 326-7099. Incidents that occur during non-office hours must be faxed to the FICC concurrently at (909) 383-5587. The Authorized Officer will receive a comprehensive follow-up report within 14 calendar days of the incident's discovery.

2. The helicopter pilot will be instructed to avoid steep craggy areas of the surrounding mountains so as to protect lambing bighorn sheep. The pilot will also be instructed to break off pursuit if bighorn sheep inadvertently start herding with the burros.

Wilderness:

1. Capture sites will be located in areas that have been previously disturbed. No temporary trap sites, temporary corrals, helicopter landings or ground motorized vehicle travel will occur within any wilderness area. The capture sites will be located along wilderness boundaries and will be confined within the boundary roads, cherry stem roads, or areas otherwise excluded from wilderness. The helicopter pilot will be advised of the location of wilderness boundaries and be provided with a wilderness area boundary map. The pilot will also be instructed to minimize helicopter use over wilderness. Special care will be taken to minimize disturbance to resource values in the gather area.

Desert Tortoise Conservation Measures

Activities associated with the approved action will comply with the following terms and conditions from the Biological Opinion for the California Desert Conservation Area Plan [Desert Tortoise] (1-8-04-F-43R).

1. Term and Condition 1

- a. The Bureau must ensure that only biologists authorized by the Service under the auspices of this biological opinion are allowed to handle desert tortoise to assist in implementing the actions for which take was exempted in this incidental take statement.
- b. All handling of desert tortoises and their eggs, relocation of desert tortoises, and excavation of burrows must be conducted by an authorized biologist in accordance with recommended protocol (Desert Tortoise Council 1999).
- c. The Bureau must ensure that only biologists approved or authorized by the Service under the auspices of this biological opinion conduct pre-project clearance surveys for desert tortoises or engage in moving desert tortoises out of harm's way.
- d. The Bureau must submit the names(s) and credentials of the approved biologists(s) to the Service for review and approval at least 15 days prior to the onset of activities. The Bureau must ensure that no activities begin until a biologist is approved by the Service.

2. Term and Condition 2

When burros are being removed from areas where desert tortoises are likely to be present and are likely to be killed or injured by the removal of burros, the Bureau must have biologists authorized by the Service present to ensure desert tortoises are moved from harm's way or avoided, if necessary. The Bureau must use its best professional judgment in determining when a Service-authorized biologist needs to be present; we expect such circumstances to occur when the removal of burros is likely to result in concentrated activity by horses, burros, or workers or ground disturbance in areas where desert tortoise are likely to be present and are likely to be present and are likely to be killed or injured by the removal activities.

3. Term and Condition 5a.

- a. To ensure that the measures approved by the Bureau are effective and are being properly implemented, the Bureau must contact the Service immediately if a desert tortoise is killed or injured by human activities. At that time, the Service and the Bureau must review the circumstances surrounding the incident to determine whether additional protective measures are required. Grazing, the removal of burros, and casual use associated with recreation and mining may continue pending the outcome of the review, provided that the Bureau's approved protective measures and any appropriate terms and conditions of this biological opinion have been, and continue to be fully implemented.

Additional measures that will be adhered to include:

4. The authorized biologist will maintain a record of all desert tortoises handled. This information shall include for each tortoise:
 - a. the locations (narrative and maps) and dates of observations;
 - b. general condition and health, including injuries and state of healing and whether animals voided their bladders;
 - c. location moved from and location moved to;
 - d. diagnostic markings (i.e., identification numbers or marked lateral scutes);
 - e. photograph of each handled desert tortoise as described in previous measure.
5. A BLM biologist will conduct a desert tortoise survey in accordance with U.S. Fish and Wildlife Service protocol (USFWS) at each approved capture site.
6. Temporary structures, vehicles, equipment, helicopter landing sites and other activity will be located in areas free of tortoise burrows. At least 24 hours prior to initiation of activities, the area around the holding pens/helipad/campsite will be surveyed for tortoise. All burrows will be marked and temporary fencing will be erected around all burrows.
7. The authorized biologist will be responsible for overseeing compliance with protective stipulations for the desert tortoise and for compliance coordination. This individual will have the authority to halt all activities that are in violation of the stipulations.
8. The gather crew will participate in a desert tortoise education program:
 - a. general behavior and ecology of the tortoise;

- b. sensitivity to human activities;
 - c. legal protection;
 - d. penalties for violations of State or Federal laws;
 - e. reporting requirements; and
 - f. project-specific mitigation measures.
9. The area of disturbance will be confined to the smallest practical area, considering topography, placement of facilities, locations of burrows, public health and safety, and other limiting factors. To the extent possible, previously disturbed areas within the site will be utilized. The project lead will ensure compliance with this measure.
10. Upon locating a dead or injured tortoise, the project proponent or agent is to notify the BLM Resource Area Office. The BLM must then notify the Ventura field office of the USFWS by telephone within three days of the finding. Written notification must be made within five days of the finding, both to the appropriate USFWS field office and to the USFWS Division of Law Enforcement in Torrance. The information provided must include the date and time of the finding or incident (if known), location of the carcass or injured animal, a photograph, cause of death, if known, and other pertinent information.

An injured animal shall be transported to a qualified veterinarian for treatment at the expense of the project proponent. If an injured animal recovers, the appropriate field office of USFWS should be contacted for final disposition of the animal.

The BLM shall endeavor to place the remains of intact tortoise carcasses with educational or research institutions holding the appropriate State and Federal permits per their instructions. If such institutions are not available or the animal's remains are in poor conditions, the information noted above shall be obtained and the carcass left in place. If left in place and sufficient pieces are available, the BLM (or its agent) shall attempt to mark the carcass to ensure that it is not reported again. Arrangements for disposition to a museum shall be made prior to removal of the carcass from the field.

11. Except on county-maintained roads, vehicle speeds shall not exceed 20 miles per hour through desert tortoise habitat.
12. Workers shall inspect for tortoises under a vehicle prior to moving it. If a tortoise is present, the worker shall carefully move the vehicle only when necessary and when the tortoise will not be injured by moving the vehicle or shall wait for the tortoise to move out from under the vehicle.
13. No dogs shall be allowed at a work site in desert tortoise habitat.
14. All trash and food items shall be promptly contained within closed, raven-proof containers. These shall be regularly removed from the project site to reduce the attractiveness of the area to ravens and other tortoise predators.

15. The probability of a desert tortoise wandering onto the removal site is remote. However if such an instance should occur all activity will cease until such tortoise is no longer in danger.
16. A number of rope traps are located in close proximity to the Kern River Pipeline right-of-way. The right-of-way was heavily disturbed by the pipeline expansion project completed in May of 2003. The disturbed area was restored following guidelines, monitoring, and success criteria included in the Reclamation Plan for the right-of-way expansion project. To the extent possible, activities associated with the burro gather will not encroach upon the Kern River Pipeline right-of-way. This includes exclusion of vehicles and trap sites from the right-of-way. Vehicles could cross the right-of-way using open routes of travel.

Wildlife

1. Bighorn sheep lambing areas will be avoided January 1 through June 30.

Hazardous and Solid Wastes

1. The burro capture will be planned so as not to result in the release of solid, hazardous, or special wastes. Releases of any hazardous or special waste (petroleum, etc.) material will be reported immediately in accordance with the Hazardous Materials Emergency Response Contingency Plan (24 hours a day, 7 days a week) to the Federal Interagency Communications Center (FICC) at (909) 383-5651. An Initial Report will be faxed to the authorized officer within 24 hours of the incident's discovery (760) 326-7099. Incident reports that are due over a weekend and/or holiday period must also be faxed to the FICC concurrently at (909) 383-5587. The authorized officer will receive a comprehensive follow-up report within 7 calendar days of the incident's discovery. All Environmental Protection Agency, Office of Safety and Health Administration and California Office of Safety and Health Administration regulations, and Bureau Policy will be complied with. Material Safety Data Sheets for all chemicals used on site will be available on site, and will be reviewed by users prior to use. All decontamination equipment and supplies will be provided according to MSDS and product label instructions. The Spill Prevention, Control and Countermeasures Plan for remote fueling for helicopter project work for the tracking, capture and removal of wild horses and burros will also be followed.

Health and Safety (BLM Employees)

1. In addition to the health and safety provisions addressed in protection measure 1, BLM employees will comply with agency health and safety policy. The approved action includes by reference the Job Hazard Analyses (JHA's) of applicable staff positions, Risk Assessments for specific Tasks planned (e.g. helicopter use), Health and Safety Plan, and Hazardous Materials Emergency Response Contingency Plan (in Appendix B). The Bureau Safety Manual (1703-1-2) is also incorporated by reference and special attention will be paid to sections concerning Wild Horse and Burros and Helicopter Operations. Tailgate Safety Sessions will be held before work each day. All employees will read all of the above listed safety documents.

Special attention will be given to avoid over working/heating horses and employees, and to assurance that potable water is available on site, and both horses and employees are fully hydrated at all times. Wrangler horses have died in prior operations and special efforts will be made to avoid such accidents or fatalities.

All accidents during the operation will be reported per Bureau policy and copies of all accident reports will be faxed to the Authorized Officer within 72 hours of the accident, by the responsible supervisor. First aid and cardiopulmonary resuscitation training will be given to all employees and at least one employee in every crew, on every shift will be certified beyond a basic first aid level. Helicopter operations are inherently dangerous, and special attention will be given to compliance with all regulations and policies. Persons working in and around helicopters will be trained within two years in helicopter operations and certified by the Bureau.

POTENTIAL CAPTURE SITE LOCATIONS

ID*	Township	Range	Section
T1	17N	14E	13
T2	17N	14E	13
T3	17N	14E	14
T4	17N	14E	12
T5	17N	14E	23
T6	17N	14E	35
T7	16N	14E	31
T8	15 1/2N	14E	18
T9	15 1/2N	14E	19
T10	15 1/2N	14E	19
T11	15 1/2N	14E	19
T12	16N	12 1/2E	13
T13	16N	12 1/2E	13
T14	16N	12E	22
T15	16N	12E	22
T16	16N	12E	22
T17	16N	11E	24
T18	15N	11E	2
T19	15N	10E	2
T20	15N	10E	14
T21	16N	10E	24
T22	16N	10E	21
T23	17N	11E	32
T24	17N	11E	35
T25	17N	11E	24
C1	18 1/2N	12 1/2E	1
C2	18N	13E	8
C3	18N	13E	23
C4	17N	15E	7
C5	17N	15E	24
C6	16N	14E	11
C7	17N	15E	18
C8	17N	12E	17
C9	16N	12E	18
C10	16N	10E	24

Rationale For Decision:

The *Wild Free-Roaming Horse and Burro Act*, as amended (16 U.S.C. 1331-1340) provides the statutory authority for the management of wild and free-roaming horses and burros on the public lands. Section 3(b)(2) of the act provides the statutory authority for the removal of excess wild horses and burros. Excess wild horses and burros and appropriate management levels are defined in the act and BLM policies. The stipulations for humane gathers and handling are also codified in the act.

The *Wild Free-Roaming Horse and Burro Act* requires that excess wild horses and burros be removed from the public lands in order to preserve and maintain a thriving natural ecological balance and multiple use relationship in that area.

Based on population estimates from aerial survey data and ground observations, the current population of burros in the HA (i.e., 150 burros) exceeds the appropriate management level (AML) of 0 burros as prescribed in the California Desert Conservation Area (CDCA) Plan as amended by the Northern and Eastern Mojave Desert Management (NEMO) Plan. The East Mojave Herd Management Area Plan (EMHMA) objectives provide that burro numbers will be reduced to the levels prescribed by the CDCA Plan. Populations can increase by 15 percent to 25 percent annually. Taking a conservative reproductive estimate, population numbers could double in five years. Pursuant to the Environmental Assessment, impacts associated with uncontrolled burro populations degrade the natural environmental quality of arid land ecosystems and will continue to intensify as animal numbers increase.

Delays in removal of burros would increase the cost and time needed to meet BLM multiple use and sustained yield management requirements, and NPS preservation objectives. The consequences of a long delay could degrade wildlife habitat and wilderness areas. Delays may result in negative and irreversible impacts to vegetation and soils of the area, critical desert tortoise habitat, the Desert Wildlife Management Areas (DWMA), prime desert bighorn sheep habitat, and grazing land within an allotment. The Clark Mountain area is currently receiving excessive amounts of trailing and formation of dirt wallows by burros. The California Desert Conservation Area (CDCA) Plan indicated that a factor for the Valley Wells and Clark Mountain allotments being only in fair rangeland condition was uncontrolled or unmanaged burro populations. Within the CDCA, this action affects the Kingston Range, Mesquite Mountain, Northern Mesquite Mountain, and Stateline Wilderness Areas and, in the Mojave National Preserve, it affects the Clark Mountain Wilderness Area.

In addition, the 1994 *California Desert Protection Act* transferred Clark Mountain, covering 37,000 acres, to the National Park Service (NPS) in the creation of the Mojave National Preserve. This transferred the only springs containing yearlong surface water to the NPS. The burros in this area currently range between NPS and BLM lands. They are dependent upon springs in the Preserve for their survival. The NPS General Management Plan for the area does not provide for retention of burros in the Preserve.

Effective Immediately:

This decision is issued effective immediately, in accordance with Title 43 Code of Federal Regulations 4770.3(c), to allow for the immediate removal of excess burros from the Clark Mountain HMA. Immediate removal of burros is necessary to prevent negative and irreversible impacts to the threatened desert tortoise and its critical habitat, vegetation and soils of the area, the Desert Wildlife Management Areas (DWMA), and prime desert bighorn sheep habitat. The initial gather is scheduled to begin as early as mid January, 2007. If the burros can not be gathered in January due to contracting schedules, then the gather may be postponed until March or April of 2007.

The approved action is necessary to comply with federal statutes and CDCA Plan policy as amended by the NEMO Plan, 2002.

The Record of Decision for the 2002 NEMO Plan amended the 1980 CDCA Plan and eliminated the Clark Mountain Herd Management Area for the management of burros due to two factors:

- A. The U.S. Fish and Wildlife Service (USFWS) designated the desert tortoise as a threatened species in 1990 (55 FR 12178) and critical habitat was designated in 1994. The 1994 USFWS Desert Tortoise (Mojave Population) Recovery Plan recommended that grazing by feral ("wild") burros be prohibited throughout Desert Wildlife Management Areas. The western portion of the herd area contains critical desert tortoise habitat. The Record of Decision for the NEMO Plan eliminated the Clark Mountain Herd Management Area for wild burros in the Ivanpah DWMA and adjusted the Appropriate Management Level (AML) from 44 to 0 throughout the herd area to provide for recovery of the desert tortoise.
- B. The 1994 California Desert Protection Act transferred Clark Mountain (37,000 acres) to the National Park Service in the creation of the Mojave National Preserve. This transferred the only springs which had yearlong surface water to the National Park Service. The burros in this area are dependant upon those springs for their survival. The National Park Service's General Management Plan for the area does not provide for retention of burros in the Preserve.

Public Notification:

Notification of the proposed action and analysis has been prominently posted in the Needles Field Office public area and on the Field Office web site during the environmental review process. Both the public area posting and the office web site home page note that public participation is the cornerstone of the National Environmental Policy Act process and encourage public involvement in the office's review of uses approved on public lands. The web site main page provides a link to projects currently under environmental review.

Copies of the burro removal capture plan and Environmental Assessment were sent to interested public, State, County, and local government representatives, and other

federal agencies on November 22, 2006. A Notice of Proposed Action in Wilderness (NOPA), was sent to individuals and organizations on November 18, 2006,. A hearing was held at the Needles Field Office on December 6, 2006 and a Town Hall meeting was held at the Barstow Field Office on December 13, 2006 addressing the use of motorized vehicles and aircraft in the administration of the Act.

Comments and Responses:

Comments related to Senator Feinstein's letter pertaining to the role of the National Park Service:

Response: The 1994 (CDPA) specifically stated that lands transferred from the Bureau of Land Management to the National Park Service in the creation of the Mojave National Preserve would be managed under laws applicable to the National Park Service (NPS). The National Park Service's General Management Plan does not provide for retention of burros in the Preserve. The perennial water sources on which the burros are dependant are located on the NPS administered lands.

The BLM has not received any official statement by Senator Feinstein's office or the National Park Service that would change the management objectives specified in the Mojave National Preserve General Management Plan, 2002.

Comments related to the use of helicopters in wild horse and burro gathering operations:

Response: 43 CFR Ch. II Part 4700 - Protection, Management, and Control of Wild Free-Roaming Horse and Burros; Subpart 4740- Motor Vehicles and Aircraft provides BLM and the Forest Service with the authority to use helicopters to capture animals and motorized vehicles to transport captured animals.

The use of helicopters and motorized vehicles has proven to be a safe, effective and practical means for the gather and removal of excess wild horses and burros from the range. All capture and handling activities are conducted in accordance with established Standard Operating Procedures (SOPs) outlined in the Capture Plan for Wild Burros for the Clark Mountain Herd Management Area 2007-2012.

Comments related to compliance with the Wild Free-Roaming Horse and Burro Act and the protection of burros:

Response: 43 CFR Ch. II Part 4700 - Protection, Management, and Control of Wild Free-Roaming Horse and Burros; Subpart 4710--Management Considerations; Sec. 4710.1 Land use planning: Management activities affecting wild horses and burros, including the establishment of herd management areas, shall be in accordance with approved land use plans prepared pursuant to part 1600 of this title.

The BLM identified the geographic areas as having been used by a wild horse or burro herd as its habitat in 1971, known as herd areas. Within these herd areas, the wild horses and burros shall be protected under 43 CFR Ch. II Part 4700-Protection, Management, and Control of Wild Free-Roaming Horses and Burros. Through the land

use planning process, these herd areas can be identified for the management or removal of wild horses and or burros in all or part of the herd area, dependant upon resources, private property and neighboring State and federal agencies.

The Clark Mountain herd area was addressed in the Northern and Eastern Mojave Desert Management Plan where the authorized officer consulted with Federal and State wildlife agencies and other affected interests for developing the approved actions and alternatives evaluated in the Environmental Impact Statement. The Record of Decision was signed in 2002, eliminating the Clark Mountain Herd Management Area to provide for the recovery of the threatened and endangered desert tortoise.

Comments Related to the management responsibilities of the National Park Service for burros defined in the 1994 California Desert Protection Act:

Response: The Wild Free-Roaming Horse and Burro Act:

§1332. Definitions

As used in this Act-

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

The Wild Free-Roaming Horse and Burro Act does not apply to the National Park Service. The 1994 CDPA transferred Clark Mountain (37,000 acres), to the National Park Service in the creation of the Mojave National Preserve. The CDPA specifically states that these lands will be managed under laws applicable to the National Park Service. The National Park Service's General Management Plan does not provide for retention of burros in the Preserve. The perennial water sources on which the burros are dependant are within the NPS administered lands.

Comments related to Compliance with Section 106 of the National Historic Preservation Act:

Response:

The decision to eliminate the Clark Mountain Herd Management Area and remove the remaining burro population was reached in the BLM's Northern and Eastern Mojave Desert Management Plan (NEMO) Amendment to the California Desert Conservation Area Plan. Scoping, outreach, and public involvement for the plan amendment was conducted throughout the planning process between 1995 and the issuance of the Record of Decision in December 2002 (*Final Environmental Impact Statement, Approved Northern and Eastern Mojave Desert Management Plan and Amendment to the California Desert Conservation Plan, July 2002 (NEMO)* and *Northern and Eastern Mojave Desert Management Plan Record of Decision, December 2002 (ROD)*).

During the NEMO planning process, BLM received no comments from the public nor were issues raised specific to the elimination of this herd management area and removal of the burros on cultural resources grounds. No contentions were raised that

the Clark Mountain area should be considered a significant historic landscape eligible for inclusion on the National Register of Historic Places and that the burro population should be considered a contributing element to the significance of the historic landscape

BLM received no comments, and no questions were raised, regarding the treatment of the area as a traditional cultural property (TCP). No group or cultural community claimed the area should be considered a traditional cultural property or that the landscape and the burros were an essential component in the on-going maintenance of the culture or identity of a traditional community.

In addition, cultural resource literature reviews and analysis at the planning level encountered no evidence to lead BLM to identify or consider the Clark Mountain area as a significant historic landscape. BLM consulted with the California State Historic Preservation Officer (SHPO) on the decisions in the NEMO plan. BLM found that elimination of the Clark Mountain herd management area and removal of the burro population would have no effect on historic properties. The SHPO had no objection to the agency finding.

Other than conjecturing that the Clark Mountain area might be a historic landscape, the comment has provided no documentation or statements about the period of significance that should be considered, the significant landscape qualities and values that would represent the period of significance, or how burros would represent and contribute to the significance within historic context.

The current undertaking is an implementation of the decision made in the NEMO plan. Cultural resources surveys specific to the decision of how the burros are to be gathered were conducted in February 2005, and in March, April, and October of 2006. Cultural resources literature reviews and surveys for the plan implementation action were focused on the site-specific removal activities, which involve the construction of corrals and staging areas required for the removal of the herds.

Section 106 review was carried out in accordance with the terms and conditions of the *State Protocol Agreement (2004)* between the California State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the BLM. BLM found that the cultural resources documentation and level of effort was adequate to identify significant historic properties that might be affected by this undertaking and has found that no historic properties would be affected by this undertaking. In accordance with the *State Protocol Agreement*, BLM made a reasonable effort to identify significant historic properties and to take into account the effects of the undertaking on significant historic properties.

Looking at the issue of herd management at the large-scale landscape level and within the context of the Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195), wild horse and burro herds are managed as part of the larger landscape of the American West. This fully recognizes that the act intended that wild and free roaming horses and burros are living symbols of the historic and pioneer spirit of the West. Within this symbolic context, the maintenance and management of wild horses and burros provide both an emotional and sentimental connection to the historic American West for the public. In accordance with the Act, BLM manages wild and free roaming

horse and burro populations in identified herd management areas pursuant to appropriate land management plans. Although the Act recognizes the importance of wild burro populations in an historical context, it does specifically provide for removal of some populations at the discretion of the Secretary of the Interior. That decision was reached in the NEMO Plan. Removal of a small population of burros from a small herd management area would not significantly affect the larger landscape of the American West or the maintenance and management of populations of wild horses and burros symbolic of the historic American West.

Comments related to no evidence that burros adversely affect desert tortoises:

Response:

This paragraph has been added to environmental assessment Clark Mountain Herd Area Burro Removal, Fiscal Years 2007 - 2012 (CA-690-EA04-27) in the environmental consequences section under wildlife;

"Burros can adversely affect desert tortoises and their habitats directly and indirectly. Burros can trample, injure, or kill desert tortoises either above ground or while in burrows. Juvenile desert tortoise burrows are particularly vulnerable to trampling because of their locations and the shallow soil covering that protects the tunnels. Shrubs can be trampled that are used as sites for desert tortoise burrows and pallets, and provide protection from predators and temperature extremes. (U.S. Fish and Wildlife Service. 1994. Desert Tortoise (Mojave Population) Recovery Plan pages D18 through D20)."

In addition, the wildlife section also states that "The elimination of burros within the Clark Mountain HA would have a positive effect on desert tortoises and their critical habitat. A summary of these effects has been provided in the NEMO plan amendment (pages 4-28, 4-43, and 4-44) and includes reduction in the loss of vegetative cover, litter, and soil compaction. These impacts were analyzed in the biological opinion for the California Desert Conservation Area Plan as amended (1-8-04-F-43R)."

Comment: No economic impact study done to investigate what damages to tourism for the area would occur, especially damage to the First District of San Bernardino County, and the comment that San Bernardino County has never been informed of this action.

Response:

Under recreation in the environmental consequences section of environmental assessment Clark Mountain Herd Area Burro Removal, Fiscal Years 2007 - 2012 (CA-690-EA04-27) the benefits and conflicts of removing burros are analyzed and states:

"Removal of the burro population from the Clark Mountain Herd Area would benefit the recreational experience by eliminating dung piles on the dry lake beds, decrease new trail creation and dirt wallows that increase dust particles. Dry lake beds, free of burro dung would enhance wind dependent recreational activities on

Ivanpah Dry Lake. The reduction in the burro population will decrease interaction impacts between off highway vehicles, humans, and burros.

Conforming to the land management goals outlined in the CDCA Plan (1980) as amended by the 2002 NEMO plan may be perceived as a conflict of use by wildlife and nature enthusiasts who visit the area to observe and photograph burros."

The removal of burros would have a minimal impact on those who visit the area to observe and photograph burros because there are other burro populations in the CDCA that can be photographed.

The environmental assessment, Clark Mountain Herd Area Burro Removal, Fiscal Years 2007 - 2012 (CA-690-EA04-27) was sent to the San Bernardino County Supervisor and no response was received.

Comment: The No Action alternative should be chosen:

Response:

The no action alternative would not be in compliance with the CDCA Plan as amended by the NEMO Plan, and it does not meet the purpose and need of the proposed action.

BLM Appeal Procedure:

This decision is issued effective immediately in accordance with Title 43 Code of Federal Regulations 4770.3(c) to allow for the immediate removal of excess burros from the Clark Mountain HMA.

With respect to non-wilderness public lands, this decision may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, Office of the Secretary, in accordance with the regulations contained in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E and enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the California Desert District office, Bureau of Land Management, U.S. Department of Interior, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed is in error. Please provide the Needles Field Office, 1303 East Highway 95, Needles, CA 92363 with a copy of your appeal and Statement of Reasons.

If you wish to file a petition pursuant to 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay:

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay; is not granted, and
- (4) Whether the public interest favors granting the stay.

Approved by:

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Steven J. Borchard
California Desert District Manager



Date